

AMENDED IN SENATE APRIL 20, 2009

**SENATE BILL**

**No. 173**

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**Introduced by Senator Florez**

February 14, 2009

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~~An act to amend Section 47026 of the Food and Agricultural Code, relating to farmers' markets. An act to add Sections 110153 and 111836 to, and to add Article 6.7 (commencing with Section 110808) to Chapter 5 of Part 5 of Division 104 of, the Health and Safety Code, relating to food safety.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 173, as amended, Florez. ~~Farmers' markets. Food safety: testing and recalls.~~

*Existing law, the Sherman Food, Drug, and Cosmetic Law, authorizes, for purposes of enforcement of the law, an authorized agent of the State Department of Public Health to, among other things, enter any factory, warehouse, or establishment in which any food is manufactured, packed, or held, enter any vehicle that is being used to transport or hold the food, and inspect any factory, warehouse, establishment, vehicle, or place, and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. Existing law authorizes the agent to secure any sample or specimen of any food, as specified. It is unlawful for any person to refuse to permit entry or inspection, the taking of samples or other evidence, or access to copying of any record as authorized by this part, or to conceal the samples or evidence, or withhold evidence concerning them. A violation of the law is a misdemeanor.*

*This bill would require every food grower, food processor, and food facility that subjects food that it grows, processes, or prepares for sale to testing to determine the presence of a microbe, pathogen, poisonous chemical, or other harmful substance that may cause food-borne disease to maintain accurate records with the results of these tests, as specified, and report to the department test results that indicate the presence of a microbe, pathogen, poisonous chemical, or other harmful substance that may cause food-borne disease.*

*This bill would require the State Public Health Officer to recall food to prevent, circumscribe, or eliminate any condition if the food may carry an illness, infection, pathogen, contagion, toxin, or condition that, without intervention, could transmit an illness that could kill or seriously affect the health of humans, as specified.*

*This bill would require every food grower, food processor, or food facility that grows, processes, or prepares for sale food that causes the outbreak of a food-borne disease and is subject to a mandatory recall by the department to be subject to specified requirements, except under certain circumstances.*

*By creating a new crime, this bill would create a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law provides that California farmers may transport for sale and sell California-grown fresh fruits, nuts, and vegetables that they produce directly to the public at a certified farmers' market, as specified. Existing law provides that it is unlawful for any person operating under these provisions to commit certain acts related to the conduct of farmers' markets. Existing law provides that the Secretary of Food and Agriculture or the county commissioner may, until January 1, 2012, levy a civil penalty against a person who violates these provisions, as specified.~~

~~This bill would extend these civil penalty provisions until January 1, 2013.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 110153 is added to the Health and Safety*  
2     *Code, to read:*

3     110153. (a) *Every food grower, food processor, and food*  
4     *facility that subjects food that it grows, processes, or prepares for*  
5     *sale to testing to determine the presence of a microbe, pathogen,*  
6     *poisonous chemical, or other harmful substance that may cause*  
7     *food-borne disease shall maintain accurate records with the results*  
8     *of these tests for at least two years after receipt of the test results.*  
9     *These records shall be subject to inspection pursuant to this part.*

10    (b) *Every food grower, food processor, and food facility*  
11    *described in subdivision (a) that receives test results that indicate*  
12    *the presence of a microbe, pathogen, poisonous chemical, or other*  
13    *harmful substance that may cause food-borne disease shall report*  
14    *these test results to the department within one hour of receipt in*  
15    *accordance with department regulations regarding the method of*  
16    *reporting.*

17    SEC. 2. *Article 6.7 (commencing with Section 110808) is added*  
18    *to Chapter 5 of Part 5 of Division 104 of the Health and Safety*  
19    *Code, to read:*

20  
21                     *Article 6.7. Food Recalls*  
22

23    110808. *Subject to the rights and procedures established*  
24    *pursuant to Chapter 4.5 (commencing with Section 11400) of*  
25    *Division 3 of Title 2 of the Government Code, and in accordance*  
26    *with regulations adopted pursuant to this code, the State Public*  
27    *Health Officer shall recall food if he or she believes, upon any*  
28    *basis reasonably supportable by standard epidemiological practice*  
29    *or credible scientific research, that the food may carry an illness,*  
30    *infection, pathogen, contagion, toxin, or condition that, without*  
31    *intervention, could transmit an illness that could kill or seriously*  
32    *affect the health of humans, including, in addition to the original*  
33    *condition, those clinically plausible secondary illnesses, infections,*  
34    *pathogens, contagions, toxins, or conditions arising from the effects*  
35    *of the original.*

36    SEC. 3. *Section 111836 is added to the Health and Safety Code,*  
37    *to read:*

1 111836. (a) Except as provided in subdivision (b), every food  
2 grower, food processor, or food facility that grows, processes, or  
3 prepares for sale food that causes the outbreak of a food-borne  
4 disease and is subject to a mandatory recall by the department  
5 shall be subject to all of the following:

6 (1) If the food grower, food processor, or food facility is  
7 determined to be liable for damages arising from a cause of action  
8 brought by a person harmed by the food, the food grower, food  
9 processor, or food facility shall also be liable to the plaintiff for  
10 treble damages.

11 (2) Onsite inspections by an authorized agent of the department  
12 at a frequency determined by the department to prevent any  
13 additional outbreaks of a food-borne disease, but not less than  
14 eight days per month for a period of at least 12 months. The food  
15 grower, food processor, or food facility shall be liable for the costs  
16 of these inspections.

17 (3) A suspension of operations for an amount of time determined  
18 by the department to prevent any additional outbreaks of a  
19 food-borne disease, but not to exceed six months.

20 (b) Every food grower, food processor, or food facility that  
21 grows, processes, or prepares for sale food that causes the  
22 outbreak of a food-borne disease and is subject to a mandatory  
23 recall by the department shall be exempt from the requirements  
24 of subdivision (a) if the food grower, food processor, or food  
25 facility does both of the following:

26 (1) Has a written Hazard Analysis and Critical Control Point  
27 Plan that delineates the formal procedures for following the  
28 Hazard Analysis and Critical Control Point principles developed  
29 by the National Advisory Committee on Microbiological Criteria  
30 for Foods.

31 (2) Routinely subjects food that it grows, processes, or prepares  
32 for sale to testing to determine the presence of a microbe,  
33 pathogen, poisonous chemical, or other harmful substance that  
34 may cause food-borne disease in accordance with good standards  
35 and practices of the industry.

36 (c) Nothing in this part shall be construed to require a food  
37 grower, food processor, or food facility to meet the requirements  
38 of paragraph (1) or (2) of subdivision (b).

39 SEC. 4. No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because

1 *the only costs that may be incurred by a local agency or school*  
2 *district will be incurred because this act creates a new crime or*  
3 *infraction, eliminates a crime or infraction, or changes the penalty*  
4 *for a crime or infraction, within the meaning of Section 17556 of*  
5 *the Government Code, or changes the definition of a crime within*  
6 *the meaning of Section 6 of Article XIII B of the California*  
7 *Constitution.*

8 ~~SECTION 1. Section 47026 of the Food and Agricultural Code~~  
9 ~~is amended to read:~~

10 ~~47026. This article shall remain in effect only until January 1,~~  
11 ~~2013, and as of that date is repealed, unless a later enacted statute,~~  
12 ~~that is enacted before January 1, 2013, deletes or extends that date.~~